REMARKS/ARGUMENTS

The present application is a Request for Continued Examination under 37 C.F.R. §1.114 of pending U.S. Application Serial Number 09/271,011, which was filed on March 17, 1999. This Amendment is to support the Request for Continued Examination concurrently filed therein.

In the final Office Action dated May 26, 2004, the Office Action objected to the drawings and the specification and rejected claims 1-20 under 35 U.S.C. § 103. Claims 1, 10, 16, and 19 have been amended. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Claims 1-20 remain in this application.

Double Patenting

1. Claims 1-20 were rejected under the judicially created doctrine of the obviousness-type double patenting of the claim of copending Application No. 09/271,008 and claims of copending Application No. 09/131,141. The Office Action asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention of the instant application encompasses the claimed subject matters of the copending applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Therefore, Applicants acknowledge and offer submission of a terminal disclaimer to obviate the obviousness-type double patenting rejection upon allowance of the pending claims. Applicants respectfully request that the obviousness-type double patenting rejection are held in abeyance until allowance of the pending claims.

Rejection Under 35 U.S.C. § 103

2. Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Simmons et al. (US 6,192,028) ("Simmons") in view of Frazier et al. (US 5,784,559) ("Frazier"). Applicants respectfully traverse the rejection and contend that a *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-128 (8th Ed., rev. 2, May. 2004).* Applicants respectfully contend that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

The final Office Action states that the port vector FIFO assigns the frame pointer to the appropriate output queue, corresponds to the claimed "based on a relative order in which the data frames are transmitted on each of the virtual links." Applicants respectfully disagree. Simmons merely discloses transferring the data frame from the receive FIFO to the external memory (Simmons, col. 7, lines 62, 64). This is done merely based on the header information, not according to the complete reception of the frame (Simmons, col. 1-4). The header information does not contain any information regarding the order, priority, or the pointer values.

Neither Simmons nor Frazier, taken alone or in any combination, discloses or even suggests one or more of the following: (1) receiving a plurality of indications denoting commencement of data frame transmission of received frames as recited in claims 1, 10, 16 and 19; (2) determining if the received frames constitute a flow as recited in claims 1 and 16; (3) if the received frames do not constitute a flow, assigning pointer values to corresponding records based on at least in part on a relative order as recited in claims 1, 10, 16 and 19; or (4) the pointer value determining an order according to complete reception of the frame in which the respective data frames are promoted as recited in claims 1, 10, 16 and 19.

Simmons merely discloses determining each receive FIFO individually, not in an aggregated link including a plurality of links. (Simmons, col. 7, lines 44-46). More importantly, Simmons teaches away from the invention by disclosing that the external rules checker "enables decision to be made in an order independent from the order in which the frames were received by the multiport switch." (Simmons, col. 6, lines 54-56). Simmons also teaches "random-based ordering in the decision queue". (Simmons, col. 6, lines 51-52). A random order implies that there is no order.

In response to Applicants' arguments, the final Office Action presents counter-arguments to which Applicants respectfully disagree as follows:

1) Aggregate link:

The final Office Action states that "Simmons' Figure 1 does indeed depict a plurality of links (MACs 60 and 62) corresponding to the claimed term "aggregated link". The Office Action further states that the logical combining multiple physical links into a logical channel trunk is widely known in the Gigabit Ethernet community as "trunking" and had been patented by Sun Microsystems in patent 6,049,528 (final Office Action, page 10). Applicants respectfully disagree for the following reasons.

The existence of a plurality of links does not mean that an aggregate link is formed or considered. "Aggregate" is defined by The American Heritage Dictionary, Second College Edition, published by Houghton Mifflin Company, 1985, as "Gathered together into a mass or sum so as to constitute a whole; total" (Definition 1). The MACs 60 and 62 as shown in Figure 2A of Simmons clearly show two separate elements Each MAC has its own receive FIFO and transmit FIFO (Simmons, col. 7, lines 44-46). Frames are placed in the corresponding receive FIFO (Simmons, col. 7, lines 47-49). Therefore, the processing of the data frames is performed on the FIFO's individually without regard to one another, not as an aggregate link.

2) "Random order" versus "relative order" and "an order according to complete reception of the frame":

The final Office Action further states that the language in the claim does not exclude the interpretation of Simmons' "random-based ordering in the decision queue" and random order does not imply that there is no order. Applicants respectfully disagree for the following reasons.

First, the claim language clearly recites that "the assignment of the plurality of pointer values based, at least in part, on a relative order in which data frames are transmitted, . . and each of the plurality of pointer values being used to determine an order according to complete reception of the frame . . . "(Claim 1) The order, therefore, is specifically and clearly recited in the claim language. Second, a "random order" implies that there is no order because: (1) "random", defined by The American Heritage Dictionary, Second College Edition, published by Houghton Mifflin Company, 1985, as "having no specific pattern or objective" (Definition 1), and (2) "order", defined by The American Heritage Dictionary, Second College Edition, published by Houghton Mifflin Company, 1985, as "a condition of logical or comprehensible

arrangement among the separate elements of a group" (Definition 1). Since "having no specific pattern or objective" is hardly "logical or comprehensible", a "random order" implies that there is no order. Specifically, a "random order" is an order having no specific pattern. In contrast, a "relative order", as recited in claims 1, 10, 16, and 19, is an order having a specific pattern of one with respect to another, and "an order according to complete reception of the frame", as recited in claims 1, 10, 16, and 19, is an order having a specific pattern based on the complete reception of the frame.

3) The final Office Action failed to address the issue regarding Simmons teaching away from the invention by disclosing that the external rules checker "enables decision to be made in an order independent from the order in which the frames were received by the multiport switch."

The final Office Action does not address the issue regarding Simmons disclosing that the external rules checker "enables decision to be made in an order independent from the order in which the frames were received by the multiport switch." (Simmons, col. 6, lines 54-56). Since Simmons discloses an order independent from the order in which the frames were received, Simmons teaches away from the claimed invention. Claims 1, 10, 16, and 19 recite "the assignment of the plurality of pointer values based, at least in part, on a relative order in which data frames are transmitted on each of the virtual links and each of the plurality of pointer values being used to determine an order according to complete reception of the frame" (Emphasis added.).

To clarify the claim language, claims 1, 10, 16, and 19 have been amended. Support for the amendments can be found in the specification on page 22 (lines 5-11) and page 23 (lines 12-20).

Accordingly, Applicants respectfully request the rejections under 35 U.S.C. §103(a) be withdrawn because a *prima facie* case of obviousness has not been established.

Conclusion

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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